IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO. 104 OF 2002.

1. Hanuman Mahadeo Narvekar
   alias Shirodkar, r/o
   Housing Board, Plot No.
   70, Mapusa.
2. Mr. Shankar Atmaram Narvekar
   alias Shirodkar, r/o
   Ansabhat, Mapusa.
3. Mr. Tulsidas Atmaram Narvekar
   alias Shirodkar, r/o Housing
   Board, Plot No. 50, Mapusa. ... Appellants.

Versus

1. Allahabad Bank, having its
   registered office at 2,
   Nataji, Subhash Road,
   Calcutta-1, represented by
   its Chief Executive Officer.
2. Allahabad Bank, having its
   branch office at Mapusa,
   represented by its Branch
   Manager, Satyaheera Bldg.,
   Mapusa. ... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Appellants.

Mr. R.G. Ramani, Advocate for the Respondents.

Coram: P.V.HARDAS, J.

Date: 18th October 2002.

ORAL JUDGMENT.

This First Appeal has been filed against the Order of the IST Additional Civil Judge, Senior Division, Mapusa, dated 24th September 2001, in Civil Miscellaneous Application No. 209/00/Sr/I in Special Civil Suit No. 180/97/Sr/I, dismissing the suit filed by the present appellants on the ground that the said suit was not maintainable as there was a legal bar to its maintainability. The said Civil Miscellaneous

Application had been filed by the present respondents under Order VII, Rule 11 of the Code of Civil Procedure on the ground that the subject matter of the suit could not have been tried by the Civil Court and the jurisdiction was vested with the Rent Controller under the Goa, Daman and Diu Rent Control Act.

2. I have heard Mr. Lotlikar, learned senior counsel for the appellants. Mr. Lotlikar, while submitting that the suit was maintainable, has invited my attention to the two Judgments of the Apex Court in **D.C. Bhatia and others v. Union of India and another,** (1995) 1 S.C.C. 104 and **M/s. Ambalal Sarabhai Enterprises Ltd. v. M/s. Amrit Lal & Co. and another,** A.I.R. 2001 S.C. 3580. It was, therefore, urged before me by Mr. Lotlikar, the learned senior counsel for the appellants, that the suit was maintainable.

3. The records and proceedings from the trial Court had been called for. The learned trial Court on 9th June 1999 had framed six issues. Issue no. 5 deals with the jurisdiction to try and entertain the suit. Issue no. 4 deals with the contention of the defendants that the defendants are the statutory tenants and are duly protected by law. Meanwhile, it appears that the defendants had filed application under Order VII, Rule

11 of the Code of Civil Procedure on 31st July 2000. It was on the basis of the said application that the Order impugned in the appeal came to be passed.

4. After having heard Mr. Lotlikar, learned senior counsel for the appellants, Mr. Ramani, learned counsel appearing for the respondents/defendants, submitted before me that in the peculiar circumstances of the case he may be permitted to withdraw Civil Miscellaneous Application 209/00/Sr/I filed by the defendants under Order VII, Rule 11 of the Code of Civil Procedure. He contends that since the learned trial Court has framed the issues, it would be appropriate that the learned trial Court decides the suit on merits as any Order on the aforesaid application, at this stage, would amount to pre-judging the issues framed by the learned trial Court. Mr. Lotlikar, learned senior counsel on behalf of the appellants has no objection for permitting the respondents/defendants to withdraw the said application filed under Order VII, Rule 11 of the Code of Civil Procedure but, requests that the learned trial Court be directed to decide the suit expeditiously, preferably by a time bound programme as the civil suit has been filed in the year 1997.

5. I have given by anxious consideration to the submissions made on behalf of the

respondents/defendants. The learned trial Court vide Exhibit 16/A had framed the issues. These issues substantially cover the objection which has been raised by the respondents/defendants in their application under Order VII, Rule 11 of the Code of Civil Procedure. Any observations, at this juncture, in respect of the Order impugned in the appeal would amount to pre-judging the issues which arise in the suit. Therefore, in the peculiar facts of the case, I am inclined to permit the respondents/defendants to withdraw their application filed under Order VII, Rule 11 of the Code of Civil Procedure. The Order impugned in the appeal, therefore, will have to be quashed and set aside.

6. In the result, therefore, the Order of the learned IST Additional Civil Judge, Senior Division, Mapusa, dated 24th September 2001 is, hereby, quashed and set aside as the respondents/defendants are permitted to withdraw the application under Order VII, Rule 11 of the Code of Civil Procedure. The suit which stood dismissed by the aforesaid Order stands restored to file. Since the suit is of the year 1997, the learned trial Court is directed to expeditiously decide the suit and preferably within six months of the receipt of the records and proceedings from this Court. The First Appeal is, therefore, allowed on the aforesaid terms with no order as to costs. R. & P. be remitted

to the trial Court.

(P.V. HARDAS)
JUDGE.

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